83-1140

No. 83-____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

THE STATE OF ARIZONA, et al.,
Petitioners,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY and
THE SOUTHERN PACIFIC
TRANSPORTATION COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

DOES AN ACT OF CONGRESS, 49 U.S.C. § 11503(c), WHICH AUTHORIZES THE GRANT OF INJUNCTIVE RELIEF AGAINST A STATE, FORECLOSE THE APPLICATION OF TRADITIONAL EQUITY STANDARDS IN THE GRANT OF A PRELIMINARY INJUNCTION AGAINST THE STATE AND ITS COUNTIES IN THEIR COLLECTION OF TAXES?

LIST OF THE PARTIES

The petitioners and defendants below are the State of Arizona, its Department of Revenue, J. Elliott Hibbs, Director of the Department of Revenue, and fourteen of the fifteen counties in Arizona.[1/] The respondents and plaintiffs below are the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Transportation Company, railroads which operate in Arizona.

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1. Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma.

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OPINIONS BELOW

The memorandum decision of the United States Court of Appeals for the Ninth Circuit is set forth in the Appendix. The opinion of the district court is unreported. See Appendix.

JURISDICTIONAL GROUNDS

The decision of the United States Court of Appeals was filed on December 23, 1983. No petition for rehearing

was filed or is pending.

This Court has jurisdiction to review the decision on writ of certiorari under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

49 U.S.C. § 11503

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the states, to prevent a violation of subsection (b) of this section . . ..

STATEMENT OF THE CASE

In 1982 both respondents (railroads) brought separate actions against the State of Arizona and the Arizona counties alleging violation of 49 U.S.C. § 11503 (a part of the Railroad Revitalization, Regulatory Reform Act of 1976--4R Act). Jurisdiction of the district court was invoked under 49 U.S.C. § 11503(c). These actions were

consolidated by the district court for preliminary injunction purposes. After a hearing the district court enjoined the collection by the counties[2/] of the second half of the 1982 property taxes. Despite the urging by the petitioners that 49 U.S.C. § 11503(c) does not foreclose the traditional equity standards, and that Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), should control, the district court relied upon Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 869 (9th Cir. 1983), and held that the traditional prerequisities for equitable relief need not be satisfied before a preliminary injunction may be issued under § 11503, and that "[t]he equitable considerations raised by the defendants are, therefore, irrelevant".

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2. Respondents' property taxes are paid to the counties.

Appendix at A-28. A timely appeal was brought to the Court of Appeals for the Ninth Circuit. Notwithstanding petitioners' strenuous argument that Trailer Train was decided without having considered Weinberger, a controlling decision of this Court, the Court of Appeals felt bound by its previous decision and, without mentioning Weinberger, affirmed the district court in a memorandum decision on December 23, 1983 (see Appendix at A-1).

ARGUMENT

REASONS FOR GRANTING CERTIORARI

A. SUMMARY

The Court of Appeals decision here is clearly in conflict with the applicable decisions of this Court[3/] and should be summarily set aside. The

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3. Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982); Hecht v. Bowles, 321 U.S. 321 (1944).

decision, if left undisturbed, would result in district courts, in 4R Act cases, granting preliminary injunctions without a showing of irreparable harm by the railroads and without considering the hardship to the states and their political subdivisions. The resultant disruption to the fiscal well-being of the states and their political subdivisions would be devastating, with grave attendant injury to principles of Equity, Federalism and Comity.

B. WEINBERGER v. ROMERO-BARCELO IS CONTROLLING, AND 49 U.S.C. § 11503(c) REQUIRES THE APPLI-PLICATION OF TRADITIONAL EQUITY STANDARDS.

In Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), this Court held:

> The grant of jurisdiction to insure compliance with a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of

law. TVA v. Hill, 437 U.S. 153, 193 (1978); Hecht Co. v. Bowles, supra, at 329.

These commonplace considerations applicable to cases in which injunctions are sought in the federal courts reflect a "practice with a background of several hundred years of history", Hecht Co. v. Bowles, supra, at 329, a practice of which Congress is assuredly well aware. Of course, Congress may intervene and guide or control the exercise of the courts' discretion, but we do not lightly assume that Congress has intended to depart from established principles. Hecht Co. v. Bowles, supra, at 329. As the Court said in Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946):

> Moreover, the comprehensiveness of its equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.' Brown v.

Swann, 10 Pet. 497, 503
. . . .

456 U.S. at 313.

This Court then carefully distinguished TVA v. Hill, 437 U.S. 153 (1978) by explaining:

> In TVA v. Hill, we held that Congress had foreclosed the exercise of the usual discretion possessed by a court of equity. There, we thought that "one would be hard-pressed to find a statutory provision whose terms were any plainer" than that before us. 437 U.S. at 173. The statute involved, the Endangered Species Act, 87 Stat. 884, 16 U.S.C. § 1531, et seq., required the district court to enjoin completion of the Tellico Dam in order to preserve the snail darter, a species of perch. The purpose and language of the statute under consideration in Hill, not the bare fact of a statutory violation, compelled that conclusion.

Id. at 313, 314.

Applying Weinberger to this case, we must ascertain whether Congress, in the enactment of the 4-R Act, has foreclosed the exercise of the usual discretion possessed by a court of equity.

49 U.S.C. § 11503(c) provides, in relevant part:

> Notwithstanding section 1341 of Title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdictions of the courts of the United States and the States, to prevent a violation of subsection (b) of this section.

49 U.S.C. § 11503 recodified Section 306 of the 4-R Act. Sub-paragraph (2) of § 306 provided:

> Notwithstanding any provision of section 1341 of Title 28, or of the Constitution or laws of any state, the district court of the United States should have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitionary injunctive relief, interim equitable relief, and declarartory judgment as may be necessary to prevent restrain or terminate any acts in violation of this section.

It is readily apparent that in § 11503 the words "injunction" or "injunctive relief" do not even appear.

In § 306, although these words appear, they appear in permissive terms: "as may be necessary to prevent, restrain, or terminate any acts". It is therefore clear that Congress, in providing for federal court jurisdiction and a remedy for the violation of the 4-R Act, was only concerned with making this Act an exception to the Anti-Injunction Act, 28 U.S.C. § 1341.[4/] Therefore, Congress simply intended for the district court to have the power to issue an injunction whenever such a remedy is necessary. By giving the district court this jurisdiction, Congress did not intend to require the district court to issue an injunction in all cases, particularly in the case of granting a preliminary injunc-

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4. Otherwise, the district court cannot entertain such lawsuits. See Fair Assessment v. McNary, 454 U.S. 100 (1981).

tion.[5] The plain language of either version of the statute precludes any contrary conclusion.

Section 11503(c), therefore, is very similar to the statute in Hecht v. Bowles, 321 U.S. 321 (1944). As this Court recognized in Weinberger:

> "The statute at issue in Hecht v. Bowles, 321 U.S. 321, 88 L.Ed. 754, 64 S.Ct. 587 (1944), contained language very similar to § 1319(b) [Federal Water Pollution Control Act]. It directed the Administrator to seek "a permanent or temporary injunction, restraining order, or other order" to halt violations. Id. at 322, 88 L.Ed. 754, 64 S.Ct. 587. The Court determined that such statutory language did not re-

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5. Moreover, should the railroads ultimately prevail, the counties could be required to refund the money paid previously. As this Court said in Sampson v. Murray, 415 U.S. 61, 90 (1974):

> The possibility that adequate compensatory or other corrective relief will be available at a later date, in the course of ordinary litigation, weighs heavily against a claim of irreparable harm.

quire the court to issue an injunction even when the Administrator had sued for injunctive relief."
Weinberger v. Romero-Barcelo, 456 U.S. at 317, n. 12 (emphasis supplied).

The conclusion that Congress did not intend for the 4-R Act to displace traditional equitable criteria in the grant of injunctive relief becomes irrefutable when the legislative history of the 4-R Act is examined. House Rep. 94-725, 94th Cong., 1st Sess. (1975), states:

> Enactment of this section will not necesarily mean the Federal Courts will enjoin all state taxation of rail property which are the subject of complaint. The railroads will still have the burden of demonstrating that discrimination exists. They will also have to make the additional showing that they are entitled to injunctive relief. With respect to the latter issue, the courts in the exercise of equity jurisdiction will balance the adverse impact on the community of granting such relief against the benefits to the carrier from such relief. The federal courts will be able to devise remedies that

> will not be burdensome to the communities involved. (Emphasis added).

The above language makes it crystal clear that not only did Congress not intend to foreclose the application of traditional equity standards in the grant of injunctive relief in 4-R Act cases, it specifically intended that these standards should be applied.

This pertinent legislative history was totally overlooked by the Ninth Circuit Court of Appeals in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (1983) and the Tenth Circuit Court of Appeals.[6/] See also Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 531 F.Supp. 220, 226, n.6 (D.C. Kansas 1981). Although cited

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6. The Trailer Train decision relied upon Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981), a decision which predated Weinberger.

to the Ninth Circuit Court of Appeals by the petitioners, the Court of Appeals chose to mention neither this legislative history nor the Weinberger precedent.

C. CONCLUSION

The Court of Appeals decision in this case, which followed its decision in Trailer Train v. State Board of Equalization, supra, is in conflict with the controlling decision of this Court. Moreover, it is contrary to Congressional intent as evidenced by the pertinent Congressional history. This decision must be summarily reversed. See, e.g., Mason v. City of Biloxi, 385 U.S. 370 (1966).

Alternatively, this Court should summarily vacate the decision with the instruction that the Court of Appeals must consider Weinberger upon remand. Failure to correct this erroneous deci-

sion will result in practically every state and its political subdivisions being subject to the precipitous, harsh and disruptive issuance of injunctive relief against their collection of taxes due from the railroads without any judicial consideration of equity principles.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.	No. 83-2026
Plaintiffs/Appellees,	DC Nos. 82-1279, 82-1792, 82-1298, 83-185
vs.	
THE STATE OF ARIZONA, et al.,	
Defendants/Appellants.	MEMORANDUM*

Appeal from the
United States District Court
for the District of Arizona
Charles L. Hardy,
District Judge, Presiding

Argued and submitted November 18, 1983

Before: DUNIWAY, TIMBERS,** and SKOPIL,
Circuit Judges

* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit.

** The Honorable William H. Timbers, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

Defendants, Arizona and several Arizona counties, appeal the order of the district court granting plaintiffs' request for preliminary injunctions. Issued pursuant to 49 U.S.C. § 11503, the injunctions restrain the defendants from taking any action to collect the second installment of plaintiffs' 1982 property taxes.

We are bound by our decision in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 869 (9th Cir.), cert. denied, 104 S.Ct. 149 (1983). See LeVick v. Skaggs Companies, Inc., 701 F.2d 777, 778 (9th Cir. 1983). In Trailer Train we held that the "traditional prerequisites for equitable relief need not be satisfied before a preliminary injunction may be issued under § 11503." 697 F.2d at 869. The traditional prerequisities were deemed unnecessary because the district court is specifically author-

ized to grant injunctive relief to prevent a violation of section 11503(b). 49 U.S.C. § 11503(c); Trailer Train, 697 F.2d at 869. The court determined that plaintiffs have a strong likelihood of success on the merits and we will not distrub that finding.

The order of the district court is AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.,	
Plaintiffs,	No. CIV 81-1279 PHX CLH
v.	No. CIV 82-1792 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	
SOUTHERN PACIFIC TRANSPORTATION COMPANY,	
Plaintiff,	No. CIV 81-1298 PHX CLH
v.	No. CIV 83- 185 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	

ORDER GRANTING PRELIMINARY INJUNCTIONS

The plaintiff railroad companies having applied for preliminary injunctions restraining the defendants from taking any action to collect the second installment of 1982 property taxes, and

the Court having concluded, after taking evidence and hearing the arguments of the parties, that the application should be granted,

IT IS ORDERED granting the application for preliminary injunctions.

IT IS FURTHER ORDERED enjoining the defendants from taking any action to collect the second installment of 1982 property taxes which have been levied upon the rail transportation properties of the plaintiffs.

IT IS FURTHER ORDERED that a preliminary injunction in favor of the plaintiff Atchison, Topeka & Santa Fe Railroad Company shall issue upon the giving of security by that plaintiff in the sum of $10,000 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

IT IS FURTHER ORDERED that a pre-

liminary injunction in favor of the plaintiff Southern Pacific Transportation Company shall issue upon the giving of security by that plaintiff in the sum of $10,000 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The Court's findings of fact and conclusions of law are being prepared and will be filed shortly.

DATED this 29 day of April, 1983.

/s/ Charles L. Hardy
CHARLES L. HARDY
Judge of the United States
District Court

cc: all counsel of record

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.,	
Plaintiffs,	No. CIV 81-1279 PHX CLH
v.	No. CIV 82-1792 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	
SOUTHERN PACIFIC TRANSPORTATION COMPANY,	
Plaintiff,	No. CIV 81-1298 PHX CLH
v.	No. CIV 83- 185 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	

MEMORANDUM OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiff railroad companies brought these actions to enjoin the defendants from valuing and assessing their rail transportation property for

ad valorem tax purposes in violation of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"), presently codified at 49 U.S.C. § 11503.[1]

The plaintiffs have applied for a preliminary injunction restraining the defendants from taking any action to collect the second installment of 1982 property taxes which have been levied upon their rail transportation properties, contending that Arizona's property tax assessment practices violate the 4-R Act. Payment of the second installment of the 1982 property taxes is due on May 2, 1983. A hearing has been held upon the application and it was taken under advisement. For the reasons hereinafter stated, preliminary injunctions will issue.

The discussion of the facts and the law in this memorandum shall be deemed the Court's findings of fact and con-

clusions of law required by Rule 52, Federal Rules of Civil Procedure.

I

THE 4-R ACT

Beginning in 1961, Congress conducted a prolonged inquiry into the taxation of railroad property by state and local governments. This inquiry produced substantial evidence of chronic discriminatory tax treatment caused by a combination of two tax assessment practices:

First, the true market value of railroad property and all other commercial and industrial property was overvalued and undervalued, respectively. This practice is known as de facto discrimination.

Second, the railroads were assessed at a percentage value that was higher than that of other commercial and industrial property. This practice is

known as de jure discrimination.

Arizona was cited as one of the states engaged in this type of discriminatory tax practice. See S. Rep. No. 1483, 90th Cong. 2nd Sess. 4 (1968).

In 1976, Congress passed the 4-R Act with the purpose of promoting the revitalization of the railroad industry by prohibiting discriminatory taxation of railroads by state and local government. State of Arizona v. Atchison, Topeka & Santa Fe Railway Co., 656 F.2d 398, 400 (9th Cir. 1981). The 4-R Act became effective in 1979, three years after its enactment. This delay was intended to give the states sufficient time to conform their tax statutes and assessment practices to the requirements of this new federal legislation. Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 865 (9th Cir. 1983).

The 4-R Act prohibits states and

their subdivisions from:

> (1) Assess[ing] rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

49 U.S.C. § 11503(b). It is further provided that the federal courts may remedy violations of the 4-R Act "if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11503(c). The 4-R Act indicates that the appropriate means of measuring discriminatory tax treatment is "through the random-sampling method known as a sales assessment ratio study (to be

carried out under statistical principles applicable to such a study)" if this form of proof is satisfactory to the court. Otherwise, the court shall find a violation if the assessment ratio of railroad property is higher than that of all other property in the assessment jurisdiction. 49 U.S.C. § 11503(c)(1).

II

ARIZONA'S PROPERTY TAXATION SCHEME

For taxation purposes Arizona groups property into eight classes. See A.R.S. § 42-136. Property falling into class 1 (flight property, standing timber, and mining property), class 2 (property of telephone and telegraph companies; gas, water and electric utility companies; and pipeline companies) and class 7 (property of railroads relating to their operations) is assessed centrally by the Arizona De-

partment of Finance. All other classes of property are assessed by the County Assessors.

In 1980, as a result of rulings in State of Arizona v. Atchison, Topeka and Santa Fe Railway Company, No. 78-655 (D. Ariz. Jan. 26, 1979), aff'd, 656 F.2d 398 (9th Cir. 1981), Arizona revised its tax statutes in an attempt to comply with the 4-R Act. For the year 1980, the assessment percentage for railroad property was 34 percent. Thereafter, the assessment percentage must equal the ratios which:

(a) The total assessed value for secondary tax purposes of all properties in classes 1, 2 and 3 (commercial and industrial property) bears to the total full cash value; and

(b) The total assessed valuation of all property for primary tax purposes in classes 1, 2 and 3 bears to the total limited value of such proper-

ty.[2] A.R.S. § 42-227B(7).

This statutory formula for determining an assessed valuation for railroad property that will comply with the 4-R Act rests upon two critical assumptions. First, the statute assumes that property in classes 1, 2 and 3 includes the entire range of "commercial and industrial property" as that term is used in the 4-R Act. Second, the statute assumes that the full cash value of all property in these three classes equals the true market value of the same property. Unfortunately the first assumption is wrong as a matter of law, and the second assumption is wrong as a matter of fact. In combination, these assumptions have caused the State of Arizona and its counties to violate the 4-R Act.

Acting on the assumption that the term "commercial and industrial property" included only classes 1, 2 and 3,

the director of the Department of Revenue assigned an assessment percentage of 33 percent to the railroad property for the year 1982. The State's method of calculating this assessment percentage may be summarized as follows[3]:

	Full Cash Value			Assessed Value
Class 1	982,305	x 52%	=	510,799
Class 2	7,831,979	x 44%	=	3,446,071
Class 3	10,904,957	x 25%	=	2,702,206
	19,719,241			6,659,076

$$\frac{\text{Assessed value}}{\text{Full cash value}} = \frac{6,659,076}{19,719,241} = .3377 \text{ (33\% in abstract)}$$

In granting the plaintiffs' motions for partial summary judgmen , however, this Court ruled that commercial and industrial property encompasses not only the property of classes 1, 2 and 3 but also leased residential property (class 6) and personal agricultural property (class 4). When these two types of property are considered, the ratio of assessed value to full cash

value of commercial and industrial property drops to 30 percent. This amendment of the State's method of calculating the assessment percentage may be summarized as follows[4]:

	Full Cash Value			Assessed Value
Classes 1, 2 & 3	19,719,241			6,659,076
Class 4	268,336	x 16%	=	43,041
Class 6	4,906,297	x 18%	=	879,949
	24,893,874			7,582,066

$$\frac{\text{Assessed value}}{\text{Full cash value}} = \frac{7,582,066}{24,893,874} = .3046 \text{ or } 30\%$$

These figures indicate de jure tax discrimination against the plaintiffs. The measure of discrimation is 3 percent, an amount which, alone, is not sufficient to invoke the remedial powers of this Court under the 4-R Act.

The second assumption of the assessment percentage formula for railroad property is that, for the purposes of determining the assessment ratio of

all other commercial and industrial property, the full cash value of commercial and industrial property equals the true market value of the same property. The parties stipulated that the full cash value of railroad property in Arizona is equal to its true market value. The parties also do not appear to dispute that the full cash values of other centrally-assessed properties (classes 1 and 2) are equal to their true market values. The issue is whether the locally-assessed commercial and industrial properties (primarily classes 3 and 6) are fully valued. To the extent the full cash value of commercial and industrial property does not equal its true market value, the assessment ratio of commercial and industrial property is diminshed and the degree of discrimination against the railroads is increased.

Arizona law, A.R.S. § 42-201(4)

states that "full cash value is synonymous with market value" and must be used "for the purpose of assessing, fixing, determining and levying secondary property taxes". However, data prepared by the State indicates that the full cash value of locally-assessed commercial or industrial property is only one-half its true market value.

Since the late 1970's, the Department of Revenue has prepared yearly a statewide full cash value statistical summary in an effort to measure the appraisal performance of county assessors. This summary compares the appraised values of property sold with their selling prices. Taking random samples of sales and eliminating those which do not appear to have been arm's length transactions, the statistician can locate the central tendency of the samples and thereby determine, in terms of a percentage, the average disparity

between the appraised values and the market values.[5]

The summary for 1982 indicates that the full cash value for locally-assessed real property invariably is substantially less than the true market value. If the central tendency is measured by the median of the sample, the disparity between the full cash value and the true market value of commercial and industrial property is 49 percent; if the weighted mean is used, this disparity is approximately 51 percent.[6] Combining this measure of *de facto* discrimination with the measure of *de jure* discrimination previously discussed, one can estimate, albeit roughly, that the assessment ratio of commercial and industrial property is 15 percent. This calculation may be summarized as follows:

$$\frac{\text{Assessed Value}}{\text{Full Cash Value}} = .3046 \ (30\%)$$

$$\frac{\text{Full Cash Value}}{\text{True Market Value}} = .489 \text{ (median) or } .515 \text{ (weighted mean)}$$

$$\frac{AV}{FCV} (.3046) \times \frac{FCV}{TMV} \begin{matrix} (.489) \\ \text{or} \\ (.515) \end{matrix} = \begin{matrix} .149 \text{ (median)} \\ \text{or} \\ .156 \text{ (weighted mean)} \end{matrix}$$

In conclusion, the data prepared by the State shows that the assessment of railroad property at a rate of 33 percent of full cash value would be a serious violation of the 4-R Act. The measure of discrimination being clearly more than 5 percent, this Court does have power under the 4-R Act to enjoin an attempt by the State to collect the railroad property tax due May 2, 1983.

III

THE PRECISE MEASURE OF DISCRIMINATION

Although the fact of a violation of the 4-R Act may be largely beyond dispute, the injunctive relief sought by the plaintiffs may not be issued with-

out a more precise measure of the discrimination. The railroads seek an injunction restraining the collection of all of the second installment of taxes owed. To date, the railroads have paid one-half of their 1982 tax liability based on an assessment percentage of 33 percent. If the assessment percentage for commercial and industrial property is less than one-half of 33 percent, then the amount of railroad property tax payable consistent with the 4-R Act has been fully paid in the first installment. Thus, the issue remains whether the median assessment percentage for commercial and industrial property is less than 16.5 percent.

The plaintiffs presented the testimony of Dr. Frederick Ekeblad, an expert in sales-assessment ratio studies and a veteran of 4-R Act litigation in other federal district courts. Relying on data used by the State to prepare

its full value statistical summary, Dr. Ekeblad performed an independent sales assessment ratio study. Identical in purpose to the State's summary, the sales-assessment ratio study is a statistical analysis of a random sample of ratios of assessed value to an indicator of market value. Dr. Ekeblad's study used the median to determine central tendency; weighted the data with weights proportional to the number of parcels in each legal class of property and each county; and included centrally assessed property or alternatively centrally-assessed property and personal agricultural property.[7] His study revealed that the median assessment percentage for commercial and industrial property, including centrally-assessed property, is 10.48 percent.[8] If personal agricultural property is included also, the median is 10.16 percent.[9]

The State and counties vigorously challenged the validity of Dr. Ekeblad's study primarily with two arguments.

1. Median Versus Weighted Mean

The State argued that a sales-assessment ratio study should use a weighted mean rather than a median to measure central tendency of a sample. The median is the middle ratio when the ratios are arrayed in order of magnitude. Because of this characteristic, the median is the selection of the average taxpayer or parcel transaction without regard to the dollar value of the property involved. The weighted mean is the arithmetic average of the ratios when each ratio is weighted by its corresponding sale price. Accordingly, the weighted mean assigns equal weight to each dollar value rather than to each parcel or taxpayer.

Although the median and weighted

mean have their own merits as measures of central tendency, this court is satisfied that the appropriate measure of central tendency in a sales-assessment ratio study for the 4-R Act is the median.[10] The congressional history indicates that Congress' intention was to measure the railroad's tax burden against that of the "hypothetical average taxpayer". State of Arizona v. Atchison, Topeka & Santa Fe Railway Co., 676 F.2d 398, 404 (citing S. Rep. No. 91-630, 91st Cong., 1st Sess. 10 (1969)). The median is clearly the measure of central tendency that best locates this average taxpayer, and it has uniformly received the approval of the courts in prior 4-R Act cases. Clinchfield Railroad Co. v. Lynch, No. 82-1049 (4th Cir. Feb. 3, 1983); The Atchison, Topeka & Santa Fe Railway v. Lennen, No. 80-4172 (D. Kan., April 15, 1982); AFC Industries, Inc. v.

State of Arizona, No. 82-59 (D. Ariz., May 26, 1982); Louisville and Nashville Railroad Co. v. Public Service Commission of Tenn., 493 F. Supp. 162 (M.D. Tenn. 1978).

2. The Reliability of the Sample

The Counties also argued that the sample of parcel transactions in some counties was so small as to be unreliable for the purposes of a sales-assessment ratio study. Dr. Ekeblad did concede that the sample size of some rural counties would be too small if used for only a sales-assessment ratio study of those counties individually. But as Dr. Ekeblad further noted, deficiencies in the size of the sample representing rural counties would not appreciably affect the proper location of the median for a state-wide sales-assessment ratio study.

In conclusion, Dr. Ekeblad's sales-assessment ratio study appears to

have been conducted with due regard for the statistical principles and standards relevant to such studies. This Court, therefore, accepts his study as clear and convincing evidence of the median assessment percentage of commercial and industrial property in Arizona. For purposes of the 4-R Act, a sales-assessment ratio study should include centrally-assessed property. Trailer Train Co. v. Lennen, supra; Clinchfield Railroad Co. v. Lynch, 527 R. Supp. 784, 788-89 (E.D.N.C. 1981), aff'd, No. 82-1049 (4th Cir., Feb. 3, 1983). When centrally-assessed property is included in the sample, Dr. Ekeblad's study indicates that the median assessment percentage for commercial and industrial property is 10 percent. The railroads, therefore, have clearly shown an adequate basis for seeking an injunction restraining the collection of all taxes due in their

second installment.

IV

THE PROPRIETY OF INJUNCTIVE RELIEF

The 4-R Act states that "[r]elief may be granted . . . only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property." 49 U.S.C. § 11503(c). This provision has been interpreted to mean that the court may grant injunctive relief upon a showing of a violation of the 4-R Act. Trailer Train Co. v. State Board of Equalization, supra; Atchison, Topeka & Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981).

The State and counties oppose the injunctive relief with two arguments.

1. Equitable Defenses

The counties argue that the Court should not issue an injunction in light of the equitable considerations in their favor. The counties presented evidence indicating that they will suffer financial hardship if the injunction is issued and the taxes of the railroad are not paid when due. In Trailer Train Co. v. State Board of Equalization, supra, at 868-69, however, the Ninth Circuit ruled that an injunction to stop a violation of the 4-R Act may be granted "without first requiring the establishment of the standard equitable prerequisites for such relief." Because the 4-R Act provides for equitable relief, the Court's discretion must be "exercised in light of the objectives of the Act." Atchison, Topeka & Santa Fe v. Lennen, 640 F.2d 255 (10th Cir. 1981). The equitable considerations raised by the defendants are, therefore, irrelevant. Id.;

Trailer Train Co. v. State Board of Equalization, supra; State of Tennessee v. Louisville and Nashville Railroad Co., 478 F. Supp. 199 (M.D. Tenn. 1979).

Even if equitable considerations were allowed to play a role in this decision, however, the injunction should not be denied on this basis. The counties may suffer budget deficits this year because they failed to anticipate the issuance of an injunction. But it cannot be argued seriously that the State and counties have not been put on notice that their tax practices have been discriminatory and would violate the 4-R Act when it came into effect. Moreover, the counties' responsibility for this violation of the 4-R Act is underscored by the fact that their appraisal practices clearly violate A.R.S. § 42-201(4), which requires that property be appraised at true market value. Had this legal mandate been

followed, the railroad's claim would be confined to the issue of de jure discrimination and no relief would be necessary.[11]

2. The Relevant Assessment Jurisdiction

The final argument of the State and counties is that the relevant assessment jurisdiction for a comparison of the assessment percentage of the railroads with that of commercial and industrial property should be the counties, not the State. The 4-R Act defines "assessment jurisdiction" as "a geographical area in a State used in determining the assessed value of property for ad valorem taxation." 49 U.S.C. § 11503(a)(2). In the context of the State's system of property assessment, this definition is ambiguous because railroad property and property in classes one and two are assessed centrally by the State, while all other

property is locally assessed by counties.

As the counties correctly point out, a ruling that the relevant assessment jurisdiction is the State threatens hardship to those counties that, by comparison to other counties, appraise commercial and industrial property closer to its true market value. When a state-wide median assessment percentage for commercial and industrial property is calculated, all counties contribute to this calculation, but the assessment practices of some counties may contribute more to a low median percentage than the assessment practices of other counties. A court order that enjoins taxation of railroads or directs the refund of taxes paid on the basis of a state-wide median assessment percentage, therefore, equalizes responsibility for the violation among the counties, causing hardship to those

counties with median assessment percentages higher than that of the state as a whole.

This argument notwithstanding, the Ninth Circuit has ruled that the relevant assessment jurisdiction is the entire state of Arizona. State of Arizona v. Atchison, Topeka & Santa Fe Railway Co., supra at 405. Although the interests of the counties do not appear previously to have been represented concerning this issue, the Ninth Circuit's ruling remains sound as a practical matter. The State and counties divide the responsibility for assessing property; nevertheless, the scheme for property assessment is state wide and subject to the control of the State. Thus, for the purposes of comparing centrally-assessed property such as the railroads against other commercial and industrial property, the entire state is the most efficient as-

sessment jurisidiction. Accord Atchison, Topeka & Santa Fe v. Lennen, No. 80-4172 (D. Kan. April 15, 1982).

Even though the State is the appropriate assessment jurisdiction, this Court could order relief on a county by county basis if sufficient evidence of the median assessment percentage of each county were provided. Evidence of Dr. Ekeblad's sales-assessment ratio study did not break the median assessment percentage down into the county levels. Because the State is the appropriate assessment jurisdiction, the plaintiffs did not have the burden of providing such evidence. Therefore, this Court is constrained to issue injunctive relief on the basis of a state-wide median assessment percentage. However, permanent relief will be ordered on the basis of median assessment percentages of each county if sufficient evidence is produced at trial

concerning this issue.

DATED this 2 day of May, 1983.

/s/ Charles L. Hardy
CHARLES L. HARDY
Judge of the United States
District Court

cc: all counsel of record

FOOTNOTES

1. Section 11503 was originally enacted as Section 306 of Pub. L. No. 94-210, 94 Stat. 54, Feb. 5, 1976, and was later recodified as part of the revised Interstate Commerce Act, Pub. L. No. 95-473, 92 Stat. 1337 (1978). Congress specifically provided that the recodification, while changing the language of some sections, was not intended to make any substantive change in the law. See Pub. L. No. 95-573, Section 31(a), 92 Stat. 1466.

2. The method for calculating the assessment percentage for primary tax purposes differs from that for secondary tax purposes only insofar as the assessed value of property is based on a percentage of limited property value rather than full cash value. For 1982, the limited property value is the full cash value as of 1979 plus increases in value up to 10 percent for each of the years 1980, 1981 and 1982. A.R.S. § 42-201.02. Neither party has raised the issue how this limited property value would affect measurements of discrimination under the 4-R Act. Evidence produced by the State indicates that the difference between full cash value and limited property value is not substantial, at least for the purposes of this application for a preliminary injunction, which requires only a showing that the 4-R Act has been violated. Therefore, the remainder of this opinion will assume that full cash value and limited

property value for real property are substantially the same. Accordingly, this Court's determination of the appropriate assessment percentage of commercial and industrial property value will be applicable for both primary and secondary tax purposes.

3. Exhibits 8 and 9.

4. Id.

5. Information regarding sales is obtained from affidavits of legal value recorded pursuant to A.R.S. § 42-1612. However, even though a sale may have been at arm's length, the sales price set forth in the affidavit may not necessarily represent the property's market value. The sales price may include items other than the real property itself and may also represent "creative financing." The department is currently conducting a study to determine the accuracy of the affidavits of value as indicators of market value. The defendants have tried to disparage the use of these affidavits as indicators of market value in their sales ratio analysis and that of the plaintiffs' expert, Dr. Ekeblad. However, these affidavits are regarded as the best starting point for determining actual market value, and their use appears to be widely accepted in sales ratio studies. See Exhibit 38. Their use, therefore, does not seriously diminish the reliability of the sales ratio analysis presented in this application for preliminary injunction.

6. Exhibit 6.

7. Exhibits 7, 14 and 37.

8. Exhibit 14.

9. Id.

10. This conclusion requires the Court to reject the testimony of Mr. Robert Gloudemans, director of the Department of Revenue's computer assisted appraisal unit, who testified that the proper assessment percentage for commercial and industrial property is 19.8 percent. See Exhibits 27, 28 and 35. His calculations assumed that the appropriate measure of central tendency was a weighted mean or alternatively a weighted median.

11. See Part II, Subsection 1, supra.

No. 83-1140

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1983

THE STATE OF ARIZONA, et al.,
Petitioners

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY and
THE SOUTHERN PACIFIC
TRANSPORTATION COMPANY
Respondents.

BRIEF OF RESPONDENT, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

DOES 49 U.S.C. § 11503, WHICH SPECIFICALLY EMPOWERS THE UNITED STATES DISTRICT COURTS TO ISSUE INJUNCTIVE RELIEF TO PREVENT A VIOLATION OF THE STATUTE, REQUIRE THE COURT TO APPLY TRADITIONAL EQUITABLE STANDARDS BEFORE GRANTING A PRELIMINARY INJUNCTION TO PREVENT AN IMMINENT VIOLATION OF THE STATUTE?

LIST OF THE PARTIES

Respondents, the Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") and Southern Pacific Transportation Company ("Southern Pacific") filed separate suits against the petitioners below.[1] The cases were consolidated for a joint hearing on the railroads' requests for a preliminary injunction against the collection of the second installment 1982 property taxes. Because both railroads still have separate lawsuits pending, Santa Fe and Southern Pacific have filed separate Briefs in Opposition to the Petition for Writ of Certiorari.

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1. Santa Fe and Southern Pacific transact business in different counties within the State of Arizona. Hence, while all of the counties (except La Paz County which officially came into existence on January 1, 1983) are named as defendants in the underlying suits, Santa Fe's action is only directed against the state entities and the counties of Apache, Coconino, Maricopa, Mohave, Navajo, Yavapai and Yuma.

Pursuant to Rule 28.1, Supreme Court of the United States Revised Rules, Respondent, The Atchison, Topeka and Santa Fe Railway Company submits the following list of parent, subsidiary and affiliated corporations. Respondent is a wholly-owned subsidiary of Santa Fe Industries, Inc., which is a Delaware corporation. Effective December 23, 1983, Santa Fe Industries, Inc. merged with Southern Pacific Company (the parent corporation of Respondent Southern Pacific Transportation Company), to form Santa Fe Southern Pacific, Inc., a Delaware corporation.

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PREFATORY NOTE

Pursuant to Rule 34.2, Supreme Court of the United States Revised Rules, Santa Fe will not add to petitioners' references to the opinions and judgments delivered by the courts below or the petitioners' jurisdictional statement. However, because the petitioners only set forth part of the relevant statute, Santa Fe has reproduced 49 U.S.C. § 11503 in its entirety in the Appendix to this Brief.

STATEMENT OF THE CASE

Santa Fe has no fundamental disagreement with petitioners' Statement of the Case. However, Santa Fe does wish to clarify one point concerning the decision of the district court.

While it is true that the district court did ultimately conclude that the equitable considerations raised by the petitioners were irrelevant, it nonetheless examined the merits of the

"equitable considerations" argument. As the district court stated:

> Even if equitable considerations were allowed to play a role in this decision, however, the injunction should not be denied on this basis. The counties may suffer budget deficits this year because they failed to anticipate the issuance of an injunction. But it cannot be argued seriously that the State and counties have not been put on notice that their tax practices have been discriminatory and would violate the 4-R Act when it came into effect. Moreover, the counties' responsibility for this violation of the 4-R Act is underscored by the fact that their appraisal practices clearly violate A.R.S. § 42-201(4), which requires that property be appraised at true market value.

Petition at A-29 (emphasis added).

Thus, assuming arguendo that Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), is inconsistent with the Ninth Circuit's reliance on Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (9th Cir. 1983), cert. denied, __ U.S. __, 104 S. Ct. 149 (1983), the district court's decision was nonetheless, properly affirmed.

SUMMARY OF ARGUMENT

Contrary to petitioners' assertions, the Court of Appeals' decision is not in conflict with the previous decisions of this Court in statutory injunction cases. The rule in these cases has always been that the district courts should exercise their equitable discretion "in light of the large objectives of the [legislation]." Hecht Co. v. Bowles, 321 U.S. 321, 331 (1944).

The statute under consideration in this case, 49 U.S.C. § 11503, was enacted "to eliminate the long-standing burden against interstate commerce resulting from discriminatory state and local taxation of [rail] transportation property." S. Rep. No. 1483, 90th Cong., 2d Sess. at 1. Congress concluded that it was imperative that a federal court procedural remedy be made available to railroads to prevent such discrimination. The statute declares

certain acts unlawful and expressly confers jurisdiction on the federal courts to "prevent" violations, after the requisite showing of discrimination is made.

In this case, Santa Fe established that a violation of the statute was imminent, that the level of discrimination exceeded the minimum threshhold required by the statute, and that it was likely to succeed on the merits. This showing was sufficient to support the district court's order granting a preliminary injunction. To date, every case which has confronted the issue of whether 49 U.S.C. § 11503 authorizes the issuance of injunctive relief based upon such a showing has held that it does.

ARGUMENT

A. The Ninth Circuit's Decision In This Case Is Consistent With This Court's Opinion In Weinberger v. Romero-Barcelo.

The plain language of 49 U.S.C. § 11503 confers jurisdiction upon the district

courts to "prevent a violation of subsection (b) of this section." 49 U.S.C. § 11503(c). In spite of this, petitioners contend that the Ninth Circuit's decision in this case is inconsistent with this Court's opinion in Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982). Petitioners insist that 49 U.S.C. § 11503 requires the application of traditional equity principles before a preliminary injunction can be granted. Petitioners misread Weinberger.

In Weinberger, the district court denied plaintiff's motion to enjoin immediately discharges of pollutants which did not comply with the permit requirements of the Federal Water Pollution Control Act ("FWPCA"). The court of appeals vacated and remanded with orders to grant the injunction because, the court concluded, the FWPCA had effectively withdrawn the district court's equitable discretion, and

the district court had no authority to fashion any relief other than a prohibitory injunction to prevent the violation of the statute. Upon review, the Supreme Court reversed the court of appeals, holding that "Congress, in enacting the FWPCA, [had] not foreclosed the exercise of equitable discretion. . ." 456 U.S. at 320.

In the Weinberger opinion the Court considered whether the grant of jurisdiction to insure compliance with a statute through injunctive relief imposes an absolute duty to grant an injunction when a violation is about to occur. The Court in Weinberger held that in some circumstances a court may exercise its discretion to withhold injunctive relief. Weinberger distinguished between the FWPCA and the "Endangered Species Act" discussed in TVA v. Hill, 437 U.S. 153 (1978). In Hill, the Court had held that an imminent

violation of the Endangered Species Act required the district court to issue injunctive relief. Referring to its decision in Hill, the Weinberger Court stated:

> [W]e held that Congress had foreclosed the exercise of the usual discretion possessed by a court of equity. There, we thought that "[o]ne would be hard pressed to find a statutory provision whose terms were any plainer" than that before us. 437 U.S. at 173. The statute involved, the Endangered Species Act, 87 Stat. 884, 16 U.S.C. § 1531 et seq., required the District Court to enjoin completion of the Tellico Dam in order to preserve the snail darter, a species of perch. The purpose and language of the statute under consideration in Hill, not the bare fact of a statutory violation, compelled that conclusion. . . . The statute thus contains a flat ban on the destruction of critical habitats.
>
> It was conceded in Hill that completion of the dam would eliminate an endangered species by destroying its critical habitat. Refusal to enjoin the action would have ignored the "explicit provisions of the Endangered Species Act." 437 U.S. at 173. Congress, it appeared to us, had chosen the snail darter over the dam. The purpose and language of the

> statute limited the remedies available to the District Court; only an injunction could vindicate the objectives of the Act.

Id. at 313-14 (emphasis added).

The same reasoning applied by this Court in distinguishing Hill from Weinberger can be applied to this case. Just as in Hill, refusal to enjoin the collection of taxes in violation of 49 U.S.C. § 11503 would ignore the explicit provisions of the 4-R Act. Like the statute under consideration in Hill, it is obvious that Congress has imposed a "flat ban" on discrimination against rail transportation property. 49 U.S.C. § 11503(b). In fact, the statute under consideration in Hill is even less clear than 49 U.S.C. § 11503 as regards the district court's jurisdiction. Under 49 U.S.C. § 11503 certain acts are declared to be unlawful and jurisdiction is conferred "to prevent a violation of [the statute]." 49 U.S.C. § 11503(c). The statute in Hill (16

U.S.C. § 1531 et seq.) also declares certain acts unlawful (e.g., the destruction of an endangered species), but simply confers jurisdiction to "issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder." 16 U.S.C. § 1540(e)(2). In contrast to Weinberger and the FWPCA, the cases which have construed these two statutes have clearly held that injunctions are necessary to "vindicate the objectives of the legislation.

Moreover, in Weinberger, the district court specifically found that the discharge of ordnance by the Navy had not polluted the Puerto Rican coastal waters. Therefore, the district court concluded (and this Court agreed), since compliance with the permit[3] provisions of the FWPCA would adequately satisfy the requirements of the statute and protect the quality of

the coastal water, the district court's order requiring the Navy to apply for a permit was obviously sufficient to insure compliance with the law. Such is obviously not the case here.

During the 15 years predating the enactment of 49 U.S.C. § 11503, Congress heard extensive testimony which demonstrated that discriminatory overtaxation of railroad property was a pervasive, national problem.[2] Congress determined that such discrimination imposed an undue burden on the nation's railroads and the national economy:

> In the last 9 years, the railroads alone have been assessed more than $900 million in discriminatory taxes.

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2. The legislative history underlying 49 U.S.C. § 11503 identifies Arizona as one of the worst offenders in regard to property tax discrimination against railroads. See, e.g., S. Rep. No. 92-1085, 92d Cong., 1st Sess. at 6 (1972); S. Rep. No. 91-630, 91st Cong., 1st Sess. at 5 (1969); S. Rep. No. 1483, 90th Cong., 2d Sess. at 4 (1968).

> . . . Not only are such taxes reflected in the transportation costs of goods purchased by the consumer, but also the consumers of States which do not discriminate are forced to share the cost of these burdensome tolls.
>
> The committee joins the Interstate Commerce Commission in recommending enactment of this legislation to eliminate the discriminatory tax practices weakening our national transportation system and burdening the nation's consumers.

S. Rep. No. 92-1085, 92d Cong., 2d Sess. at 3-4 (1972); S. Rep. No. 91-630, 91st Cong., 1st Sess. at 3 (1969). Congress believed that the problems caused by states' discriminatory taxation would continue unless a strong national policy overcame the states' unwillingness to grant the railroads equal tax treatment:

> Year after year the States have asked for postponement of action on legislation such as [49 U.S.C. § 11503] to put their house in order. The committee agrees with the views of the Department of Transportation that "it has been demonstrated in several studies and hearings on this subject that discriminatory taxation of surface carrier property

> is widespread whether under color of law or not. While the States . . . have made some progress in the area of discriminatory assessments, backsliding is always present unless there is a positive national policy in the picture."

S. Rep. No. 91-630, 91st Cong., 1st Sess. at 15 (1969) (emphasis added).

Because railroads had been unable to obtain effective relief from state agencies and courts, Congress concluded that a new federal remedy was necessary and, more important, that access to federal courts to enforce this remedy was essential.[3] Arizona's history of property tax discrimination, especially since the passage of 49 U.S.C. § 11503, therefore distinguishes this case from the activities engaged in by the Navy in Weinberger,

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3. Arizona's courts have traditionally been unsympathetic to the railroads' claims of persistent discrimination in property taxation. See, e.g., Apache County v. Atchison, Topeka & Santa Fe Railway Co., 106 Ariz. 356, 476 P.2d 657 (1970), appeal dismissed, 401 U.S. 1005 (1971); Southern Pacific Co. v. Cochise County, 92 Ariz. 395, 377 P.2d 770 (1963).

which this Court held non-violative of the provisions of the FWPCA. As the Court in Weinberger stated in conclusion:

> Should it become clear that no permit will be issued and that compliance with the FWPCA will not be forthcoming, the statutory scheme and purpose would require the court to reconsider the balance it has struck.

Id. at 320.

Petitioners' analysis ignores the entire thrust of this Court's opinion in Weinberger. Weinberger does not purport to overrule TVA v. Hill. Rather, the Court's opinion simply indicates that there are factual circumstances under some federal statutes where an injunction is not needed to insure compliance with the law. In those cases, the courts retain their inherent discretion to fashion less drastic relief. Weinberger reaffirms the long established rule that in statutory injunction cases the breadth of the district court's discretion is to be

considered in light of the objectives of the legislation. This is particularly clear from this Court's repeated references in Weinberger to its earlier decision in Hecht Co. v. Bowles, 321 U.S. 321 (1944).

In Hecht, the Court refused a request by the Price Administrator for an injunction to prevent future violations of the Emergency Price Control Act of 1942. The Court's decision in Hecht relied in large part on two facts which distinguish it from this case. First, the statute on its face gave the district court discretion to issue a "permanent or temporary injunction, restraining order, or other order. . . ." Id. at 328 (emphasis added). Second, the Court noted:

> [T]he District Court concluded that the "mistakes in pricing and listing were all made in good faith and without intent to violate the regulations."
>
> The District Court also found that the mistakes brought to light

> "were at once corrected, and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future."

Id. at 325-26.

In Hecht, the Court emphasized that judicial discretion "must be exercised in light of the large objectives of the Act." Id. at 331. The Court also indicated that any exercise of discretion "should reflect an acute awareness of the congressional admonition" in the statute at issue. Id.

The intent of Congress in enacting 49 U.S.C. § 11503 is clear:

> The purpose of S. 927 [now 49 U.S.C. § 11503] is to eliminate the long-standing burden on interstate commerce resulting from discriminatory State and local taxation of common and contract carrier transportation property. S. 927 has both a substantive and a procedural aspect. Substantively, it would amend the Interstate Commerce Act to declare unlawful, as an unreasonable and unjust discrimination against and an undue burden upon interstate commerce, a State or local tax rate, assessment, or collection upon the transportation property of a common or contract carrier at

> a higher level than upon property in the same taxing district. Procedurally, it would provide a remedy in Federal courts for common and contract carriers against the collection of the excessive portion of any tax based upon such unlawful assessment or rate.

S. Rep. No. 1483, 90th Cong., 2d Sess. at 1 (emphasis added). Thus, it is clear in light of the "large objectives of the [4-R] Act," that Congress intended for district courts to enjoin the collection of discriminatory taxes as the district court did below.

As in Hill, this Court might indeed be "hard pressed to find a statutory provision whose terms were any plainer" than 49 U.S.C. § 11503. In light of the clear congressional command to prevent discriminatory taxation of railroads, proof of a violation is ample predicate for the issuance of injunctive relief. This is also borne out by the numerous decisions which have confronted this issue under 49 U.S.C. § 11503.

B. The Ninth Circuit's Decision In This Case Is Consistent With Every Other Case Which Has Construed The Injunctive Relief Provisions Of 49 U.S.C. § 11503.

In affirming the district court's decision in this case, the Ninth Circuit relied on its decision in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (9th Cir. 1983), cert. denied, ___ U.S. ___, 104 S. Ct. 149 (1983), another case arising under 49 U.S.C. § 11503. In that case, the Ninth Circuit stated:

> Finally, the Board argues that the district court erred in granting the preliminary injunction without first requiring the establishment of the standard equitable prerequisites for relief. We disagree.
>
> The standard requirements for equitable relief need not be satisfied when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief. . . . Section 11503 clearly falls within this exception because its subsection (c) specifically authorizes a district court to grant injunctive relief to prevent a violation of the statute.

Id. at 868-69 (emphasis added, citations and footnotes omitted).

The Ninth Circuit's decision in Trailer Train is consistent with every other decision which has confronted this issue under 49 U.S.C. § 11503. In Tennessee v. Louisville & Nashville Railroad Co., 478 F. Supp. 199 (M.D. Tenn. 1979), aff'd. 652 F.2d 59 (6th Cir. 1981), cert. denied, 454 U.S. 834 (1981) (the first case to confront the issue of whether federal courts should grant injunctive relief under this statute), the court stated:

> Since Congress has expressly authorized federal courts to grant injunctive relief in furtherance of the express purposes of Section 306, it is not required that irreparable harm or inadequacy of legal remedies first be shown.

Id. at 210. The Tenth Circuit Court of Appeals in Atchison, Topeka & Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981), relied on the above-quoted language and an examination of 16 other

cases construing the injunctive relief provisions of ten different federal statutes, in upholding the railroads' right to injunctive relief under 49 U.S.C. § 11503. After analyzing these authorities, the Lennen court concluded:

> An analogy may be made in the wording of § 306 of the 4-R Act and the wording of many of the statutes involved in the cases cited above.

Id. at 260.

Since the Tenth Circuit's decision in Lennen and the Ninth Circuit's decisons in this case and Trailer Train, several courts have granted injunctive relief under 49 U.S.C. § 11503 on the basis of proof that discrimination against the railroads existed.[4]

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4. Santa Fe reproduced copies of several recent unpublished decisions granting injunctive relief under 49 U.S.C. § 11503 in the Appendix to its Brief before the Ninth Circuit.

C. The Legislative History Underlying The Enactment Of 49 U.S.C. § 11503 Does Not Require A Balancing Of Hardships As Petitioners Suggest.

Petitioners make an isolated reference in their Brief to the legislative history underlying 49 U.S.C. § 11503, in support of the proposition that district courts should not enjoin state taxation without first balancing the adverse impact on the community of granting such relief against the benefits to the railroad from such relief. The particular legislative history referred to in petitioners' Brief is taken out of context. Standing alone, it is also in conflict with other references contained in the voluminous 15-year legislative history antedating the enactment of 49 U.S.C. § 11503. When the language immediately preceding that portion of the legislative history quoted by petitioners is added to the short excerpt quoted in their Brief, the meaning becomes much clearer:

> Subsection (d) [now 49 U.S.C. § 11503(c)] establishes a new remedy for carriers who wish to challenge taxing authorities under this section. Under current procedure, a carrier must pay the tax which is being disputed, and then contest the collection of the tax in the state courts--with a final review possible in the United States Supreme Court. Subsection (d) allows jurisdiction of cases arising from this provision in the United States District Courts, thus, effectively allowing the carrier to seek an injunction before paying the disputed tax.

H.R. Rep. No. 94-725, 94th Cong., 1st Sess. at 77 (1975) (emphasis added).

Moreover, the following excerpt from a Report of the Senate Committee on Commerce clearly indicates that injunctive relief is available merely upon a showing by the railroads that discrimination exists:

> Paragraph (2) [now 49 U.S.C. § 11503(c)] provides that the district court shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any State or subdivision or agency thereof, or any person from doing anything or performing any act declared unlawful under Paragraph (1) [now 49 U.S.C. § 11503(b)].

> The purpose of Paragraph (2) is to allow an aggrieved carrier to bring suit in a federal district court to challenge the excessive portion of a State or local transportation property tax. The committee intends that the carrier challenging the state tax shall have the burden of proof. If the carrier sustains the burden of proving that a state or local taxing agency is assessing, collecting, or imposing tax rates that are discriminatory, the federal district courts are authorized to enjoin the unlawful action.
>
> * * *
>
> . . . There is no need for a federal court to enjoin the tax in its entirety, only the discriminatory portion, and in most cases carriers are willing to pay that portion of the tax which is unchallenged while directing their litigation to the excessive portion. In the opinion of the committee, the remedy provided in S. 927 [now 49 U.S.C. § 11503] is clearly constitutional, and is fair to both the States and the carriers in the event of litigation.

S. Rep. No. 1483, 90th Cong., 2d Sess. at 11-13 (1968) (emphasis added).

The above quoted language helps to explain the excerpt relied upon by

petitioners in their Brief. Indeed, "[e]nactment of this section will not necessarily mean the Federal courts will enjoin all state taxation of rail property...." (Petition at 11) Instead, "[t]he Federal courts will be able to devise remedies that will not be burdensome," (Petition at 11-12), by enjoining only the discriminatory portion of the tax. However, this does not deprive the district courts of the express grant of jurisdiction to enjoin an imminent violation of the statute when the railroads meet their burden of proof. To hold otherwise would emasculate the purpose of the statute and undermine the procedural remedy which Congress specifically conferred. This is clearly contrary to the legislative intent, as evidenced by the following excerpt from the congressional history:

> The addition of the procedural remedy, by authorizing Federal

courts to enjoin collection of discriminatory taxes against interstate carriers, is consistent with the obligation of Congress to regulate interstate commerce, required under the Federal Constitution and is thereby a proper and necessary action of the Congress.

The committee is convinced of the need for a Federal court procedural remedy as provided in S.927 [now 49 U.S.C. § 11503]. Section 1341 of title 28, United States Code, prohibits district courts from enjoining, suspending or restraining the assessment, levy or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State. The effect of this statute has been to close the doors of the Federal courts to carriers affected by discriminatory taxation. It has not, however, insured that the State courts provide carriers with a plain, speedy, and efficient remedy.

The testimony before the committee indicated that the present State procedures to challenge discriminatory State tax assessments are often difficult, time consuming, and not productive of material relief.

Id. at 5-6.

Congress struck a careful balance in enacting 49 U.S.C. § 11503. To date,

every case which has interpreted this statute has stated that the district courts shall have jurisdiction to issue injunctions to prevent tax discrimination whenever the railroad can meet its burden of showing that a violation is about to occur. Petitioners' suggestion that district courts must "balance the equities" before granting preliminary injunctions ignores all of these cases on the basis of an isolated, out-of-context reference taken from 49 U.S.C. § 11503's voluminous legislative history. As Justice Frankfurter might have responded to such an argument:

> "Balancing the equities" when considering whether an injunction should issue, is lawyers' jargon for choosing between conflicting public interests. When Congress itself has struck the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement under the guise of exercising equitable discretion.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 609-610 (1952) (Frankfurter, J., concurring).

The cases which have previously confronted this issue conclusively establish that the only showing required of a railroad to obtain a preliminary injunction under 49 U.S.C. § 11503 is: (1) That a violation is about to occur; (2) that the level of discrimination exceeds the threshhold level of five percent set forth in the statute; and (3) that there is a likelihood the railroad will prevail on the merits. The district court found that each of these elements had been established. The Ninth Circuit affirmed that decision. Accordingly, this Court should deny the Petition for a Writ of Certiorari.

D. Congress' Grant Of Jurisdiction To The District Courts To Prevent Violations Of 49 U.S.C. § 11503 Is Absolute.

Petitioners also attempt to mislead

this Court as to the nature of the grant of jurisdiction contained in 49 U.S.C. § 11503, by suggesting that the words "injunction" or "injunctive relief" do not appear in the statute.[5] (Petition at 11) The grant of jurisdiction to the district courts is absolute. Congress expressly

---

5. As originally enacted, Section 306 of the 4-R Act stated that the district courts shall have jurisdiction "to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain or terminate any acts in violation of this section . . ." In the historical and revision notes following 49 U.S.C. § 11503 the revisors state:

> The words "such mandatory or prohibitive" and "interim equitable relief" are omitted as unnecessary in view of the Restatement. The word "prevent" is substituted for "prevent, restrain, or "terminate" to eliminate redundancy. The words "violation of" are substituted for "any acts in violation of" for clarity.

Thus, it is clear that the revisors who changed the language presently found in 49 U.S.C. § 11503(c), had no intention of emasculating Congress' express jurisdictional grant to the district courts to issue injunctive relief.

overrode the Tax Injunction Act in enacting 49 U.S.C. § 11503(c), and conferred jurisdiction on the federal courts to "prevent" violations. Hence, Congress has declared that injunctions are necessary whenever an imminent violation of the statute is demonstrated.

CONCLUSION

The decisions of the court of appeals in this case and in Trailer Train Co. v. State Board of Equalization, supra, are not in conflict with this Court's previous decisions in statutory injunction cases. Indeed, a careful reading of all of these cases clearly shows that the guiding principle has always been for the courts to exercise their equity discretion to implement the purposes of the particular statute at issue. Congress struck the balance under 49 U.S.C. § 11503 and specifically empowered the district courts to issue injunctions to carry out the intent of the legislation.

Santa Fe made a prima facie showing of the elements required to obtain a preliminary injunction under 49 U.S.C. § 11503. The district court also held that an injunction should issue even if petitioners' "equitable considerations" were deemed relevant. The Ninth Circuit summarily affirmed that decision.

Therefore, Santa Fe requests this Court to deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED this 10th day of February, 1984.

FENNEMORE, CRAIG, von AMMON,
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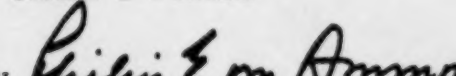
By 

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APPENDIX

49 U.S.C. § 11503

§ 11503. Tax discrimination against rail transportation property

(a) In this section--

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing tansportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a

higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial roperty in the same assessment jurisdiction. The burden of proof in

determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section--

> (1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and
>
> (2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1445.

No. 83-1140

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF ARIZONA, ET AL.,
PETITIONERS,

VS.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND THE SOUTHERN PACIFIC TRANSPORTATION COMPANY,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT SOUTHERN PACIFIC TRANSPORTATION COMPANY IN OPPOSITION

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QUESTION PRESENTED

Does 49 U.S.C. § 11503(c), which authorizes the federal courts to enjoin discriminatory taxation of railroads, require a balancing of traditional equitable considerations in addition to a finding of discrimination?

PARTIES

The parties to this action are accurately listed in the Petition.

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OPINIONS BELOW

The memorandum decision of the United States Court of Appeals for the Ninth Circuit was filed December 23, 1983. The opinion of the United States District Court for the District of Arizona was filed May 2, 1983 and is unreported. Copies of both decisions are contained in the Appendix of the Petition.

JURISDICTION

The jurisdictional statement contained in the Petition is adequate.

STATUTORY PROVISIONS INVOLVED

Public Law 94-210 of the 94th Congress, 90- Stat. 54 (1976), commonly called the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act"), was enacted on February 5, 1976. Section 306 of that Act prohibits the assessment

by a state for ad valorem tax purposes of rail transportation property at a higher ratio of the assessed value to the true market value of such rail transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property. Section 306 was originally codified at 49 U.S.C. § 26c. In October, 1978, § 26c was repealed and recodified at 49 U.S.C. § 11503. This recodification was intended to make no substantive change in the statute, as originally enacted by Congress.

STATEMENT OF THE CASE

On April 29, 1983 the United States District Court for the District of Arizona granted respondent railroads, the Atchison, Topeka & Santa Fe Railway

Company and the Southern Pacific Transportation Company, a preliminary injunction restraining the State of Arizona and its counties from collecting from respondents the second installment of the 1983 property tax on the grounds that the evidence demonstrated that it was probable that the tax was discriminatory and thus prohibited by the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"), 49 U.S.C. § 11503 et seq. The district court found that the railroad properties had been assessed for tax purposes at a rate equal to 33% of value while other commercial and industrial properties within the same jurisdiction were assessed at only 15% of value.

The district court concluded that it was unnecessary to consider traditional equitable factors in issuing the preliminary injunction. The court held

that once a probable violation of the 4-R Act was demonstrated, injunctive relief should be granted, based upon the decisions in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (9th Cir. 1983) cert. denied, 104 S.Ct. 149 (1983) and Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981). As an alternative and independent basis for its decision, the district court found that, even if traditional equitable factors were considered, the equities favored the railroads and supported issuance of the preliminary injunction. The court observed that the discriminatory practices of the State and counties were contrary to Arizona statutes which require all properties to be valued at fair market value for tax purposes, Arizona Revised Statutes, § 42-201(4). Further, the State and counties had been given three years' advance notice

of the effective date of the 4-R Act by Congress and still had failed to take advantage of this lead time to correct their discriminatory tax practices. Thus upon consideration of the equities, the court concluded that the preliminary injunction sought by the railroads should issue.

The district court's decision was appealed to the Court of Appeals for the Ninth Circuit on the grounds that the district court had erred by failing to take into account traditional equitable considerations. The State and counties argued that any reading of the 4-R Act which would dispense with the necessity of traditional equitable considerations is erroneous as a matter of law in view of this Court's decision in Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), where the availability of injunctive relief under the Federal Water Pollution Control

Act, 53 U.S.C. § 1251, was held not to preclude the courts from taking into account traditional equitable considerations in deciding whether to issue an injunction.

The Court of Appeals disagreed with the contentions of the State and counties in a memorandum decision filed December 23, 1983, in which the court held that it was bound by its prior decision in Trailer Train. The State and counties have petitioned for writ of certiorari from that decision.

SUMMARY OF ARGUMENT

The decisions of the district court and court of appeals in this case are consistent with district court and appellate decisions in other jurisdictions, which other decisions this court has declined to review. This Court's decision in Weinberger does not affect the standards

to be applied under the 4-R Act in issuing an injunction to prevent discriminatory taxation of railroads. Further, even if traditional equitable standards were to be applied in this case, the district court found that the balance of equities is on the side of the railroads.

ARGUMENT

Certiorari should be denied in this case for the same reason that this Court denied certiorari in Trailer Train and in Tennessee v. Louisville & Nashville Railroad Co., 478 F.Supp. 199 (M.D. Tenn. 1979), aff'd mem., 652 F.2d 59 (6th Cir. 1981), cert. denied, 454 U.S. 834 (1981). Those decisions, and the decision in Lennen, hold that the 4-R Act does not require an evaluation of traditional equitable considerations once a showing of a probable violation of the Act has been made.

Petitioners contend that this Court's decision in Weinberger effectively overrules those decisions.

Weinberger, however, dealt with the Federal Board of Pollution Control Act, 33 U.S.C. § 1251, and had nothing whatsoever to do with the 4-R Act. In Weinberger, this Court concluded that under the Federal Water Pollution Control Act the issuance of an injunction was not necessary to attain the objectives of the statute because the statute provided various methods by which compliance could be accomplished. Injunctive relief was simply one of many methods of effecting the statutory objective.

In deciding Weinberger this Court distinguished Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978), pointing out that the statute under consideration in Hill, the Endangered Species Act

of 1973, 16 U.S.C. § 1531, provided only one remedy to avoid extinction of the snail darter and to give effect to the statute. That remedy was the issuance of an injunction. Thus, Weinberger and Hill stand for the proposition that under some statutory schemes an injunction is to be issued upon a showing of probable violation of the statute while under other statutes the federal courts may take into account traditional equitable considerations in deciding whether to issue an injunction. The question here is whether the 4-R Act contemplates the issuance of an injunction to accomplish its objective of preventing discriminatory taxation of railroads, without the necessity of evaluating traditional equitable considerations. Courts which have considered the question have consistently held that the equities need not

be weighed. Trailer Train, Lennen, and Louisville & Nashville Railroad Co.

The 4-R Act was designed to eliminate the longstanding practice of many states and local governments of discriminating against railroad properties in the imposition of property taxes. Congress studied the area for approximately fifteen years and generated numerous Congressional reports dealing with the topic. 49 U.S.C. § 11503(b) flatly prohibits the following discriminatory acts:

> (b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them.
>
> (1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property

than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title (emphasis added).

49 U.S.C. § 11503(c) also specifies that such discriminatory taxation is to be prevented by the federal courts:

> Notwithstanding section 1341 of Title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdictions of the courts of the United States and the States, to prevent a violation of subsection (b) of this section (emphasis added).

Thus, the federal courts were specifically directed to prevent the prohibited acts from occurring, free from the restrictions of the Anti-Injunction Act. The district court found that the evidence established the probability that petitioners had discriminated against the railroads by assessing their properties for tax purposes in a manner prohibited by the statute. Thus, the preliminary injunction issued.

Petitioners contend, nevertheless, that the district court should have weighed the equities and refused the injunction. The balance of equities, according to petitioners, is that their inability to collect the taxes imposed an undue hardship in conducting their fiscal affairs. This hardship, however, is the consequence of their discriminatory tax practices and is exactly the result intended by the 4-R Act. Further, the preliminary injunction entered by the district court enjoins collection only of the discriminatory portion of the property taxes levied on the railroads. Thus, the "hardship" alleged by petitioners is simply their inability to collect an illegal tax. Rather than create a hardship, the result of the injunction was to give effect to the federal statute. Further, petitioners' argument that an injunction should not have issued for the

reason that the taxes, if finally found to be discriminatory, could be recovered by the railroads by way of a refund suit ignores the purpose of § 11503(c), which is to " . . . prevent a violation of subsection (b) of this section. . . ." Injunctive relief is the traditional method of preventing an illegal act.

Petitioners also rely upon a statement in H.R. Rep. No. 725, 94th Cong., 1st Sess. (1975), referred to on page 112 of their petition, for support of their contention that Congress intended a balancing of equities. The brief passage quoted by petitioners is taken out of context from the House Report. Read in its entirety, the Report plainly indicates that the federal courts would have broad authority to fashion injunctive relief to fit the circumstances under consideration and that only the discriminatory portion of the

tax would be enjoined. Immediately preceding the brief excerpt relied upon by petitioners, the Report states that the legislation would empower the Federal Courts to enjoin discriminatory taxes, "thus, effectively allowing the carrier to seek an injunction before paying the disputed tax." H.R. Rep. No. 94-725, 94th Cong., 1st Sess. at 77 (1975). Moreover, every other congressional report dealing with the 4-R Act omits any reference to traditional equitable considerations. See H.R. Rep. No. 585, 94th Cong., 1st Sess. 183-189 (1975); H.R. Rep. No. 764, 94th Cong., 1st Sess. 139 (1975); S. Rep. No. 595, 94th Cong., 2nd Sess. 166 (1976). Most importantly, as enacted by Congress, § 11503 reflects no intent to require a balancing of equities; the courts are authorized "to prevent" violations of the statute. The only prerequisite to injunctive relief under § 11503(c) is that there

be at least a 5% variation in the ratio of assessed value to true market value. At most, petitioners have cited an isolated ambiguity in the legislative history which, standing alone, is of little if any value in interpreting the statute. NLRB v. Plasterer's Local Union No. 79, 404 U.S. 116 (1971). Further, when a statute is unambiguous, such as § 11503, it is unnecessary to resort to legislative history. National Resources Defense Counsel, Inc. v. U.S. Environmental Protection Agency, 507 F.2d 905 (9th Cir. 1974).

Finally, it should be noted that the district court concluded that, upon considering the equities, the injunction should still issue. As the district court observed in its opinion, the State of Arizona had prepared sales ratio studies for a number of years. In the study for 1982, "data prepared by the State indicates that

the full cash value of locally-amended commercial or industrial property is only one-half its true market value," while the railroads' properties were assessed at 100% of their true market value. Petition for Writ of Certiorari at A-18. Thus, the district court pointed out that petitioners had failed to value the properties of the railroads for tax purposes in accordance with Arizona law, A.R.S. § 42-201(4), which provides that all properties are to be valued for tax purposes at full cash value. The district court further observed that Congress had given petitioners three years' advance notice of § 11503 in order to put their houses in order, and they had failed to do so. The statute became law on February 5, 1976 but its effective date was delayed until February 5, 1979. Pub.L. No. 95-473, § 2(b) (1976). The following explanation for the delay is

found at page 13 of S. Rep. No. 630, 91st Cong., 1st Sess. (1969):

> The purpose of this proviso is to provide a 3-year period of adjustment for State and local tax authorities.
>
> The committee considers this a reasonable period for such authorities to make needed changes. Further, within the 3-year period all State legislatures will have an opportunity to meet and consider amendatory State legislation, if such is needed.

Indeed, as the district court correctly noted in its opinion, Congress had identified Arizona as one of the states which engaged in the discriminatory taxation practices that § 11503 was enacted to prevent. Petition for Writ of Certiorari at A-10. Despite the three year grace period provided by Congress and despite petitioners' own sales ratio studies

confirming their discrimination against the railroads, petitioners did nothing to remedy their illegal practices prior to the railroads' applications for injunctive relief. The district court correctly determined that these facts belie petitioners' claims of inequity and compel the finding that any balancing of equities favors the railroads. This aspect of the district court's decision is not challenged or even mentioned by petitioners. The existence of this independent factual basis for the district court's decision militates against certiorari review by this Court. United States v. Johnston, 268 U.S. 220, 227 (1925).

CONCLUSION

The 4-R Act was enacted to prevent what Congress had found to be the long-standing practice of many states' discriminatory taxation of railroads. When Congress

specifically provided the federal courts with authority to enjoin violations of the Act, Congress had already considered the equities and had concluded that injunctive relief was not only appropriate but necessary. Petitioners' argument that Congress intended that the courts would weigh the equities in each case is not consistent with the language of the 4-R Act or its legislative history.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari be denied.

Respectfully Submitted,

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TEXTS, STATUTES & AUTHORITIES

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This amicus curiae brief is respectfully submitted by 23 states in support of petitioner State of Arizona,

by and through their Attorneys General.

INTEREST OF THE STATE OF CALIFORNIA

The State Board of Equalization ("Board"), the agency of the State of California at whose request this brief has been filed, has the authority to assess and collect taxes upon businesses operating in the State of California. As a part of this authority, the Board assesses and collects taxes on private railroad cars in use within the State of California.

Several railroad companies and railroad car leasing companies, challenging the Board's assessment of taxes on their private railroad cars, have filed lawsuits against the Board alleging violations of 49 U.S.C. section 11503 (a part of the Railroad Revitalization and

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Regulatory Reform Act of 1976, or the "4-R Act") and requesting injunctive relief and damages.

In several of these cases, district courts have granted injunctive relief without applying traditional equity standards. Limited to the Northern District of California, the amount of taxes enjoined in such cases exceeds $11,000,000 per year.[1/]

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1. Trailer Train Co. v. State Board of Equalization, 511 F.Supp. 553 (N.D. Cal. 1981); 697 F.2d 860 (9th Cir. 1983); Cert. Den. Oct. 3, 1983, U.S. Supreme Court No. 83-14

Pullman Leasing Co. v. State Board of Equalization Ninth Cir. No. 82-4073

General American Transportation Co. v. State Board of Equalization Ninth Cir. No. 82-4117

Evans Railcar Leasing Co., et al. v. State Board of Equalization Ninth Cir. No. 82-4120

ACF Industries, Inc., et al. v. State Board of Equalization Ninth Cir. No. 82-4121

The Board has contended unsuccessfully in several of these cases that the district courts may not grant injunctive relief without the application of traditional equity standards. The result has been a significant loss of tax revenues to the State of California without

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FOOTNOTE 1 CONT.
Southern Pac. Trans. Co. v. State of Cal. N.D. Cal. No. C 82-6009 SW

Southern Pac. Trans. Co. v. State of Cal. N.D. Cal. No. C 83-4704 SW

Atchison, Top. & S.F. v. State of Cal. N.D. Cal. C 82-6030 SW

Trailer Train v. State BOE, State of Cal. N.D. Cal. No. C 82-6084

Railgon Co. v. State BOE, State of Cal. N.D. Cal. No. C 82-6085 SW

Railbox Co. v. State BOE, State of Cal. N.D. Cal. No. C 82-8086 SW

Pullman Leasing Co. v. BOE, State of Cal. N.D. Cal. No. C 82-6031 SW

Gen. American Trans. Co. v. State of Cal. N.D. Cal. No. C 82-6600 SW

ACF Ind., Inc. v. State BOE, State of Cal. N.D. Cal. No. C 82-6512 SW

consideration of any of the equities involved. It is thus of critical importance to the State of California that the issue raised by the petitioner be reviewed by this Court.

INTEREST OF AMICI STATES

The railroad companies maintain and use their railroad cars in each of the amici states. These states regularly assess and collect taxes on these railroad cars. In several of these states, district courts have granted injunctions enjoining the collection of such taxes without applying traditional equity standards. Injunctions enjoining the collection of state taxes severely disrupt the orderly and prompt collection of revenues by the states for their many ongoing and mandatory operations. Therefore, it is of profound interest to each of the amici states that the issue

raised by the petitioner be reviewed by this Court.

SUMMARY O. ARGUMENT

The Court of Appeals' decision in petitioner's case is in direct conflict with the applicable decisions of this Court and must be reversed. It was not intended by Congress in enacting the 4-R Act that district courts enjoin the collection of taxes by states and their counties without a showing of irreparable harm and without consideration of hardship to the state and their subdivisions which would result from such injunctive relief.

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ARGUMENT

I

THE COURT OF APPEALS' DECISION IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN WEINBERGER v. ROMERO-BARCELO

The Court of Appeals' decision in this case fails to apply traditional equity standards as required by this Court's decision in Weinberger v. Romero-Barcelo 456 U.S. 305 (1982). Weinberger held that unless a statute explicitly or by inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction must be recognized and applied. Citing language from its decision in Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946), this Court stated in pertinent part:

> "Moreover, the comprehensiveness of its equitable jurisdiction is not to be denied

> or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.' Brown v. Swann 10 Pet. 497, 503." 456 U.S. at 313.

The statute in question, the 4-R Act, clearly does not limit the court's equitable jurisdiction, either explicitly or by inescapable inference.

Both the language of section

306 of the 4-R Act, and the pertinent portion of the codified version at 49 U.S.C. section 11503(c), do not contain any language which may be interpreted as restricting the jurisdiction of district courts to consider equitable principles in considering whether to grant injunctive relief thereunder. On the contrary, the words "injunction" or "injunctive relief" do not even appear in section 11503(c). Moreover, section 306 only permits district courts to issue injunctive relief as may be necessary to prevent, restrain or terminate acts violating the 4-R Act. As this language was necessary to exempt the 4-R Act from the Anti-Injunction Act, 28 U.S.C. section 1341, it is clear that such was the intent of Congress in inserting this language. Clearly, Congress in using such language did not

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intend to limit the equitable jurisdiction of district courts that was delineated in Weinberger.

II

THE COURT OF APPEALS' DECISION IS IN DIRECT CONFLICT WITH THE LEGISLATIVE HISTOPY

The legislative history of the 4-R Act leaves no doubt that Congress did not intend that traditional equity standards be displaced in the consideration of whether to grant injunctive relief thereunder. House Rep. 94-725, 94 Cong., 1st series (1975), states in pertinent part:

> "Enactment of this section will not necessarily mean the Federal Courts will enjoin all state taxation of rail property which are the subject of complaint. The railroads will still have the burden of demonstrating that discrimination

exists. They will also have to make the additional showing that they are entitled to injunctive relief. With respect to the latter issue, the courts in the exercise of equity jurisdiction will balance the adverse impact on the community of granting such relief against the benefits to the carrier from such relief. The federal courts will be able to devise remedies that will not be burdensome to the communities involved." (Emphasis added).

The above language leaves absolutely no doubt that Congress did not intend to limit the power of district courts to apply traditional equity standards, but that it specifically intended that these

standards should be applied.

As held in Weinberger, limitations on the power of district courts to apply traditional equity standards must be explicit from the language of the statute. Clearly, since no such limitations are contained in the 4-R Act, district courts are required to apply traditional equity standards in considering whether to grant injunctive relief thereunder.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals is directly in conflict with this Court's decision in Weinberger v. Romero-Barcelo and the legislative history behind the 4-R Act.

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Accordingly, this decision must be vacated and remanded to the Court of Appeals with instructions to apply traditional standards as required by Weinberger and the legislative history of the 4-R Act.

DATED: February 8, 1984

Respectfully submitted,

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CERTIFICATE OF SERVICE

SUPREME COURT OF THE)
)
UNITED STATES)

I, Calvin J. Abe, Deputy Attorney General, Certify as follows:

1. I am a member of the bar of the Supreme Court of the United States.

2. My business address is 6000 State Building, San Francisco, California 94102.

3. On February 9, 1984, to my knowledge, a copy of the foregoing BRIEF OF AMICI CURIAE STATES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI was mailed within the permitted time in the following manner, addressed as follows:

Anthony B. Ching
Solicitor General of Arizona
1275 West Washington Street
Phoenix, Arizona 85007

Philip Von Ammon
100 W. Washington Street
Phoenix, Arizona 85003

Leslie Jones
2600 North Central Avenue
Phoenix, Arizona 85004

A copy of the aforesaid brief was enclosed in said envelopes, and said envelopes was then sealed, with postage thereon fully prepaid, and deposited in the United States mail at San Francisco, California, on February 9, 1984.

I certify that the foregoing is true and correct.

Executed at San Francisco, California this 9th day of February, 1984.

CALVIN J. ABE

CERTIFICATE OF MAILING

SUPREME COURT OF THE)
)
UNITED STATES)

I, Calvin J. Abe, Deputy Attorney General, certify as follows:

1. I am a member of the bar of the Supreme Court of the United States.

2. My business address is 6000 State Building, San Francisco, California 94102.

3. On February 9, 1984, to my knowledge, an original and 40 copies of the foregoing BRIEF OF AMICI CURIAE STATES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI was mailed within the permitted time in the following manner:

Under my direction, a package was addressed as follows:

Alexander L. Stevas, Clerk
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

An original and forty copies of the aforesaid brief were enclosed in said package, and said package was then sealed, with postage thereon fully prepaid, and deposited in the United States mail at San Francisco, California, on February 9, 1984.

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I certify that the foregoing is true and correct.

Executed at San Francisco, California this 9th day of February, 1984.

CALVIN J. ABE

State of California)
) ss On February 9, 1984,
City and County of San Francisco) Before me, the

undersigned, a Notary Public in and for said County and State, personally appeared Calvin J. Abe, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Subscribed and sworn to before me
on this 9th day of February, 1984.

Melinda M. Gee
Notary Public in and for
said County and State